

Appl. No. 09/923,730  
Amdt. dated August 9, 2004  
Reply to Office action of May 27, 2004

### REMARKS

Claims 1-6 are pending in the present application. Although page 1 of the Office Action indicates that claims 1-6 are allowed, the applicant understands that claims 1-6 stand rejected in accordance with the comments on pages 2-5.

Claim 6 stands rejected under 35 U.S.C. § 112, second paragraph as being indefinite due to lack of antecedence for the phrase "said referencing plane". Applicant believes that this rejection of claim 6 is overcome by way of the instant amendment.

The Office Action states that claims 1-5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yokoyama (EP 1 052 723 A2) in view of Iwabuchi et al. (U.S. Pat. No. 6,327,495). The Office Action also states that claim 6 is rejected under 35 U.S.C. § 102(e) as being anticipated by Pankinaho (EP 1 052 723 A2).

In response to the rejections of claims 1-5 the Applicant believes that a clerical error has occurred incorrectly referencing the Pankinaho EP 1 052 723 A2 published European patent application as "Yokoyama". Further, as neither of the Notice of References Cited (i.e., PTO-892) nor the Detailed Action provides assistance to the Applicant in identifying the "Yokoyama" reference, the Applicant believes that the Office Action intends to apply the Pankinaho reference in the 35 U.S.C. § 103 rejections.

In view of the foregoing, the Applicant would like to point out that Pankinaho is not a proper 35 U.S.C. § 102 reference. More particularly, Pankinaho cannot be used as a 35 U.S.C. § 102(e) reference in rejecting claim 6. 35 U.S.C. § 102(e) states that "the invention was described in (1) an application for patent, published under section 122(b), by another *filed in the United States...*" (emphasis added). Pankinaho was filed in Europe, and therefore does not satisfy the conditions of 35 U.S.C. § 102(e). This rejection should therefore be withdrawn.

Although the Pankinaho reference was filed on May 8, 2000, approximately three months before the Applicant's August 17, 2000 Japanese priority date that has been perfected, the Pankinaho reference was not made available to the public by publication until November 15, 2000. The combination of Pankinaho and Iwabuchi does not cure the impropriety of the Pankinaho reference under 35 U.S.C. § 102. To this end, the 35 U.S.C. § 103 rejections of claims 1-5 should also be withdrawn.

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Claim 1 has been amended to more clearly set forth Applicant's teachings. Claims 2, 3 and 5 have been amended in keeping with claim 1 and to correct minor clerical errors. The amendments are fully supported in the original specification and introduce no new matter.

In view of the instant amendment, it is respectfully submitted that the claims are in condition for allowance. The Applicant kindly requests that the Examiner telephone the undersigned Applicant's representative in the event a telephone discussion would be helpful in advancing the prosecution of the present application.

Respectfully submitted,

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Perry J. Hoffman - Registration No. 37,150  
David R. Morris - Registration No. 53,348  
MICHAEL BEST & FRIEDRICH LLP  
401 North Michigan Avenue, Suite 1900  
Chicago, IL 60611  
(312) 222-6636  
(312) 222-0818 (fax)

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